IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 4730 of 2005

Between:

Smt.S.Hymavathi, W/o.Sri T.Brahmaiah,
Pangal village & Mandal, Mahabubnagar District.

..... PETITIONER

AND

1 The Government of Andhra Pradesh, rep.by its Secretary, Panchayat Raj & Rural Employment,
Secretaraiat, Hyderabad
2 The District Collector, (PTS Wing), Mahabubnagar District-A.P.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly a writ in the nature of Mandamus, declaring the proceedings No.A6/1543/ 2004-1 dated 15-02-2005 of the 2nd Respondent and also in action of the 1st Respondent in not passing the orders on stay petition in the appeal filed against the said order or arbitrary and illegal and pass such other order or orders as this Hon'ble court may deem fit and proper in the interest of justice.

Counsel for the Petitioner:MR.M.NARENDER REDDY

Counsel for the Respondent No.: GP FOR PANCHAYAT RAJ & RURAL DEV.

The Court made the following :

ORDER:

The petitioner was elected as Sarpanch of Pangal Grampanchayat of Mahabubnagar District in the elections held on 20-08-2001. The District Collector, the 2nd respondent herein issued a show cause notice dated 10-11-2004, alleging that the petitioner had misused 350 quintals of ISL's rice worth Rs.2,80,000/-, and directed to show cause as to why action shall not be taken against her. The petitioner submitted her explanation on
01-12-2004. On a consideration of the explanation submitted by the petitioner, the 2nd respondent passed an order dated
15-02-2005, removing the petitioner from the office of Sarpanch, in exercise of powers under Section 249(1) of the A.P. Panchayat Raj Act (for short 'the Act'). It was further directed that the order of removal shall come into force after expiry of 30 days, as laid down under sub-section (7) of Section 249 of the Act.

Aggrieved by the order of removal, the petitioner preferred an appeal before the 1st respondent along with an application for stay. Her grievance is that the 1st respondent did not pass any order on the application for stay and in the meanwhile, the order of removal going to become operative. She prays for appropriate direction in this regard.

Heard the learned counsel for the petitioner and learned Government Pleader for Panchayat Raj.

The petitioner was removed from the office of Sarpanch by the 2nd respondent through his order dated 15-02-2005, passed under Section 249 of the Act. In the affidavit filed in support of the writ petition, as well as during the course of hearing, several submissions are made, touching on the merits of the matter. However, once the petitioner had availed the remedy of appeal under sub-section (7) of Section 249 of the Act, this Court does not intend to express any opinion on such matters.

Having regard to the importance of the office of Sarpanch and the fact that it is an elected post, the Act incorporated a provision to the effect that whenever an order of removal of such an elected Sarpanch is passed, shall become operative only after expiry of one month from the date of such order. The purpose underlying the said provision is to enable the Sarpanch so removed, to avail the remedy of appeal and seek appropriate interim orders. In fact, it is an extraordinary and exceptional provision. It indirectly mandates that the appellate authority shall consider the application for stay, before the expiry of such period. If no orders are passed on the application for stay, before expiry of 30 days, the provision itself becomes redundant. It is a different thing, that the appellate authority may not be satisfied to grant interim orders. But, even such a decision needs to be taken before the order of removal comes into operation.

The petitioner presented appeal on 02-03-2005, as soon as the order of removal was served upon her. The removal is going to become operative from 14-03-2005. The petitioner cannot be penalized on account of the inaction on the part of the 1st respondent.

For the foregoing reasons, the writ petition is disposed of, directing that the order of removal dated 15-02-2005, passed by the 2nd respondent, shall remain stayed, till the 1st respondent passes appropriate orders on the application filed by the petitioner for stay, or the appeal itself, as the case may be. There shall be no order as to costs.

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L. NARASIMHA REDDY, J.

Dt.10-03-2005.

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To

1 The Government of Andhra Pradesh, rep.by its Secretary, Panchayat Raj & Rural Employment,
Secretaraiat, Hyderabad
2 The District Collector, (PTS Wing), Mahabubnagar District-A.P.

3. 2 CCs to G.P. for Panchayat Raj, High Court of A.P., High Court buildings, Hyderabad (OUT).

4. 2 C.D. copies.

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 4730 of 2005

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Dated 10-03-2005